

SOUTH AUSTRALIA

STATE SUPPLY ACT 1985

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments as in force as at 8 July 1991.

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STATE SUPPLY ACT 1985

being

State Supply Act 1985 No. 58 of 1985 [Assented to 30 May 1985]¹

as amended by

State Supply Act Amendment Act 1986 No. 54 of 1986 [Assented to 2 October 1986]

State Supply (Miscellaneous) Amendment Act 1991 No. 27 of 1991 [Assented to 18 April 1991]²

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to provide for and control the acquisition, distribution, management and disposal of goods for or by public authorities; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *State Supply Act 1985*.

* * * * *

Interpretation

4. In this Act, unless the contrary intention appears—

“appointed member” of the Board means a member of the Board appointed by the Governor under Part II:

“the Board” means the board continued in existence under Part II under the name the *State Supply Board*:

“chief executive officer”, in relation to an authority, means the person appointed to, or acting in, the office or position (however named or described) of chief executive officer of the authority:

“goods” includes any movable property and anything attached to or forming part of land that is capable of being severed for the purpose of its acquisition or disposal:

“local government body” means—

(a) a council as defined in the *Local Government Act 1934*;

¹Came into operation 30 September 1985: *Gaz.* 26 September 1985, p. 944.

²Came into operation 17 June 1991: *Gaz.* 13 June 1991, p. 1864.

(b) a controlling body established under Part XIX of the *Local Government Act 1934*;

or

(c) any body whether corporate or unincorporate—

(i) established by a council or councils;

or

(ii) declared by regulation to be a local government body:

“management”, in relation to goods, means the care, custody, storage, inspection and stocktaking of the goods:

“prescribed public authority” means a body whether corporate or unincorporate established for a public purpose and declared by regulation to be a prescribed public authority:

“public authority” means—

(a) a department or other administrative unit of the public service or other instrumentality or agency of the Crown;

(b) a body corporate established for a public purpose and comprised of or including, or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other instrumentality or agency of the Crown;

or

(c) any body whether corporate or unincorporate established for a public purpose and declared by regulation to be a public authority,

but does not include a prescribed public authority:

* * * * *

“supply operations”, in relation to an authority, means the acquisition of goods required by the authority for its operations and includes the distribution and management of the goods and their subsequent disposal.

Act not to apply to certain bodies

5. This Act does not apply to or in relation to—

(a) the Pipelines Authority of South Australia;

(b) the State Bank of South Australia;

(c) the State Government Insurance Commission;

(d) The University of Adelaide;

(e) The Flinders University of South Australia;

(f) the University of South Australia;

or

(g) a local government body.

* * * * *

PART II
THE STATE SUPPLY BOARD

Establishment of the Board

6. (1) The *State Supply Board* is continued in existence.

(2) The Board—

(a) continues to be a body corporate with perpetual succession and a common seal;

(b) is capable of suing and being sued;

(c) is capable of holding, acquiring, dealing with and disposing of real and personal property;

(d) is capable of acquiring or incurring any other rights or liabilities;

(e) is an agency of the Crown and holds its property on behalf of the Crown;

and

(f) has the powers, duties, functions and responsibilities conferred or imposed by or under this Act or any other Act.

(3) Where an apparently genuine document purports to bear the common seal of the Board, it is to be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

* * * * *

Constitution of the Board

7. (1) The Board is to consist of—

(a) the chief executive officer of the Department of State Services (who will chair the Board);

and

(b) five other members appointed by the Governor.

(2) Of the members appointed by the Governor—

(a) two must be members or officers of public authorities or prescribed public authorities;

(b) one must be a person with knowledge and experience of private industry or commerce;

(c) one must be a person with knowledge and experience of economic and industrial development;

and

(d) one must be a person nominated by the United Trades and Labor Council.

Terms and conditions of office

8. (1) An appointed member of the Board must be appointed for a period of two years upon such conditions as may be determined by the Governor, and, upon the expiration of his or her term of office, is eligible for reappointment.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Board and that person may, in the absence of that member, act as a member of the Board.

- (3) The Governor may remove an appointed member of the Board from office for—
- (a) breach of, or non-compliance with, the conditions of his or her appointment;
 - (b) mental or physical incapacity to carry out satisfactorily the duties of his or her office;
 - (c) neglect of duty;
- or
- (d) dishonourable conduct.

- (4) The office of an appointed member of the Board becomes vacant if—
- (a) the member dies;
 - (b) the member's term of office expires;
 - (c) the member resigns by written notice addressed to the Minister;
- or
- (d) the member is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of an appointed member of the Board becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

Meetings of the Board

9. (1) The member appointed to chair the Board must chair the meetings of the Board at which he or she is present, and, in the absence of that member from a meeting, the members present must decide who is to chair the meeting.

(2) Three members of the Board constitute a quorum of the Board, and no business may be transacted at a meeting unless a quorum is present.

(3) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Board.

(4) Each member of the Board is entitled to one vote on a matter arising for decision by the Board, and the person presiding at the meeting has, in the event of an equality of votes, a second or casting vote.

(5) The Board must cause accurate minutes to be kept of the business conducted at meetings of the Board.

(6) Subject to this Act, the business of the Board may be conducted in a manner determined by the Board.

Validity of acts of the Board and immunity of members

10. (1) An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) No personal liability attaches to a member of the Board for an act or omission by that person or the Board in good faith in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this Act.

(3) A liability that would, but for subsection (2), lie against a member of the Board lies against the Crown.

Disclosure of interest

11. (1) A member of the Board who is in any way directly or indirectly interested in a contract made by the Board, or a proposed contract in the contemplation of the Board—

(a) must, as soon as he or she becomes aware of the contract, or the proposal to make the contract, disclose the nature of his or her interest to the Board;

and

(b) must not take part in any deliberations or decision of the Board with respect to that contract.

(2) For the purposes of this section, a member of the Board who is a member or officer of a public authority or prescribed public authority is not to be regarded as having an interest in a contract or proposed contract by reason only of the fact that the contract or proposed contract may benefit or affect that authority.

(3) A disclosure under this section must be recorded in the minutes of the Board.

(4) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section—

(a) the contract is not void, or liable to be avoided, on any ground arising from the member's interest in the contract;

and

(b) the member is not liable to account to the Board for any profits derived from the contract.

Allowances and expenses

12. A member of the Board is, if the Governor thinks fit, entitled to such allowances and expenses as may be determined by the Governor.

PART III

FUNCTIONS OF THE BOARD

Functions of the Board

13. (1) The functions of the Board are—

- (a) to undertake, provide for or control the acquisition, distribution, management and disposal of goods for or by public authorities;
- (b) to develop and issue policies, principles and guidelines and give directions relating to the acquisition, distribution, management and disposal of goods for or by public authorities;
- (c) to direct the terms and conditions upon which goods may be acquired or disposed of for or by public authorities;
- (d) to investigate and keep under review the practices of public authorities in relation to the acquisition, distribution, management and disposal of goods;
- (e) to provide advice on any matter relating to the acquisition, distribution, management or disposal of goods for or by public authorities, including the training and development of persons engaged in such work.

(2) For the purpose of performing its functions the Board may—

- (a) acquire, hold, deal with and dispose of real and personal property;
- (b) enter into any kind of contract or arrangement;
- (c) acquire or incur any other rights or liabilities;
- (d) direct a public authority to furnish to the Board documents or information relating to the operations of the authority;

and

- (e) exercise such other powers as are vested in it under this Act or are necessary for, or incidental to, the effective performance of its functions.

Public authorities bound by directions, etc., of the Board

14. A public authority (including every member or officer of the authority) is bound to comply with any directions given or policies, principles or guidelines issued to the authority by the Board in the performance of its functions.

Responsibility of chief executive officers in relation to supply operations

14a. The chief executive officer of a public authority is responsible for the efficient and cost effective management of the supply operations of the authority subject to and in accordance with the policies, principles, guidelines and directions of the Board.

Acquisition of services for public authorities

14b. The Board may undertake the acquisition of services for a public authority at the request of the authority or the Minister.

The Board and prescribed public authorities

15. (1) The Board may, if it thinks fit, provide advice or make recommendations to the Minister responsible for a prescribed public authority upon any matter relating to the supply operations of the authority.

(2) A prescribed public authority (including every member or officer of the authority) is bound to comply with any directions given by the Minister responsible for the authority upon the advice or recommendation of the Board.

Acquisition, etc., for prescribed public authorities and other bodies

16. The Board may, if it thinks fit—

(a) with the approval of the Minister responsible for a prescribed public authority, undertake or provide for the acquisition or disposal of goods for the authority;

or

(b) with the approval of the Minister, undertake or provide for the acquisition or disposal of goods for a body other than a public authority or prescribed public authority.

The Board and government policy

17. (1) The Minister may require the Board to have regard to a particular policy, principle or matter in the exercise of its powers and performance of its functions under this Act.

(2) Any requirement of the Minister under subsection (1) must be addressed to the Board in writing.

(3) Except as provided by this Act, the Board is not subject to ministerial control or direction.

PART IV
MISCELLANEOUS

Staff

18. (1) The Board is to be provided with such staff (comprised of persons employed in the public service of the State) as is necessary for the purposes of the Act.

(2) The Board may, with the approval of the Minister administering any administrative unit of the public service, upon terms and conditions mutually arranged, make use of the services of persons employed in that administrative unit.

(3) The Board may, with the approval of a public authority (being a body corporate), upon terms and conditions mutually arranged, make use of the services of an officer of that authority.

Delegation

19. (1) The Board may delegate any of its powers or functions to a member of the Board or an officer engaged in the administration of this Act.

(2) A delegation under subsection (1)—

(a) may be made subject to conditions specified in the instrument of delegation;

(b) is revocable at will;

and

(c) does not derogate from the power of the Board to act itself in any matter.

Financial provision

20. The money required for the purposes of this Act may be paid out of money appropriated by Parliament for the purpose.

Accounts and audit

21. (1) The Board must cause proper accounts to be kept of its financial affairs.

(2) The accounts of the Board must be audited at least once in every year by the Auditor-General.

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Annual report

22. (1) The Board must, on or before 30 September in each year, deliver to the Minister a report upon the administration of this Act during the preceding financial year.

(2) The report must contain the audited statement of accounts of the Board for the financial year to which the report relates.

(3) The Minister must cause a copy of the report to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report.

Report on operation and effectiveness of Act

23. (1) The Minister must cause a report on the operation and effectiveness of this Act to be prepared before 31 December 1994.

(2) The report must be prepared by persons not involved in the administration of this Act.

(3) The Minister must cause a copy of the report to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report.

Regulations

24. The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

APPENDIX

Legislative History

The *State Supply Act 1985* repealed the *Public Supply and Tender Act 1914*.

Long title:	amended by 27, 1991, Sched.
Sections 2 and 3:	repealed by 27, 1991, Sched.
Section 4:	definition of "chief executive officer" inserted by 27, 1991, s. 3(a) definition of "public authority" amended by 27, 1991, Sched. definition of "the repealed Act" repealed by 27, 1991, Sched. definition of "supply operations" inserted by 27, 1991, s. 3(b) substituted by 54, 1986, s. 2; amended by 27, 1991, Sched.
Section 5:	repealed by 27, 1991, Sched.
Section 5(h) - (j):	substituted by 27, 1991, Sched.
Section 6(1):	amended by 27, 1991, Sched.
Section 6(2) and (3):	repealed by 27, 1991, Sched.
Section 6(4):	substituted by 27, 1991, s. 4
Section 7:	amended by 27, 1991, Sched.
Section 8(1), (3) - (5):	substituted by 27, 1991, s. 5
Section 9(1):	amended by 27, 1991, Sched.
Section 9(2) - (6):	amended by 27, 1991, Sched.
Section 10:	amended by 27, 1991, Sched.
Section 11(1) - (3):	amended by 27, 1991, Sched.
Section 12:	inserted by 27, 1991, s. 6
Sections 14a and 14b:	amended by 27, 1991, s. 7
Section 15(1):	amended by 54, 1986, s. 3
Section 16:	amended by 27, 1991, Sched.
Section 17(2):	substituted by 27, 1991, Sched.
Section 18(1) and (2):	amended by 27, 1991, Sched.
Section 20:	amended by 27, 1991, Sched.
Section 21(1) and (2):	repealed by 27, 1991, Sched.
Section 21(3):	amended by 27, 1991, Sched.
Section 22:	amended by 27, 1991, s. 8, Sched.
Section 23(1):	amended by 27, 1991, Sched.
Section 23(2) and (3):	amended by 27, 1991, Sched.